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Reason for Downgrade to ( ) Classify as ( ) Extend as ( ) In Part ( ) In Full ( ) Deny ( ) Excise ( ) Release ( ) Exemption(s):  
Date  
Margaret P. Grief, Director  
U.S. DEPT. OF STATE, A/RPS/TPS  
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MEMORANDUM

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the Embassy has requested information from the Foreign Ministry's Human Rights Working Group on 40 persons: 26 Argentines, 6 Chileans, 3 Uruguayans, 3 Brazilians, 1 Frenchman and 1 Irishman. Of the 40, 11 are being detained under Executive decree, 6 have been or are about to be expelled (foreigners, in all cases), 11 are "not registered" by the Ministry, and the rest are still being checked out.

The Working Group's information comes largely from Ministry of Interior lists of those persons officially detained under Executive decree. The decree includes the charges, which typically fall under the National Security Law 20.840 of September 1974 involving crimes against the national security, membership in terrorist organizations, etc. There may also be other, more specific charges such as possession of firearms. The decrees are not published in the Daily Bulletin.

As the human rights group has recognized, there can be considerable lag between the time a person is picked up (under a kind of preventative arrest) during which he is usually held incommunicado while accusations against him are being investigated and the time an Executive order for his detention is decreed. In the meantime, the person may be released without an official detention order having ever been prepared. The various branches of the Armed Forces and security forces do not coordinate their activity at this preventative arrest stage and it has at times proven difficult to ascertain whether a person is being detained by government authorities or not. We have asked the working group to keep our cases open and report to us any new developments. (Law 21.460 which went into effect November 29, 1976 establishes a summary pretrial during which military and police officials are authorized to make arrests and collect evidence which is presented to a pretrial judge to make a preliminary

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finding. The judge will then order the release or detention of the accused and pass the case to his area commander who reviews it and assigns it to the appropriate court.)

Although we were originally told that the working group would not entertain queries on behalf of Argentine citizens, we have presented some cases in which there has been considerable congressional interest or a request by an American relative. As it happens, in a number of cases the family has known where the person is detained but has asked, or oftentimes has gotten a Congressman to ask, that we find out the charges and to express US interest. Usually in these cases, the working group confirms the detention and gives the Executive arrest order which includes charges of subversive activity. In NO case involving a disappeared person, Argentine or foreign, have we been provided with any new information. All disappearance cases are listed as not registered or being checked. Occasionally we are given some information on the status of a detained foreigner, e.g. an expulsion order is being prepared; he has left the country.

Noting the volume and vagueness of most American interest cases, the working group has expressed some doubt (even irritation) as to the degree of US congressional concern. They clearly believe most congressional inquiries are orchestrated by family members or international pressure campaigns and regard questions about known detainees, in contrast to missing persons, as an interference in internal Argentine affairs. The inquiry, in fact, becomes an informal protest that person X is being held by the government. A selective policy to present only serious and bonafide American interest cases is necessary in order not to prejudice our relationship with the working group. (We believe we are the only Embassy to inquire about Argentine citizens. The British Embassy, we are told, uses the working group sparingly and only brings up cases concerning foreign citizens when there is specific and persistent pressure

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from the home office.)

In addition to our efforts, other Embassies, the Church and other agencies are also making quiet representations on behalf of missing and detained persons. The UNHCR is working on behalf of mandated refugees, including a number who figure as US interest cases. In certain cases it has sought visas and expulsion orders for jailed refugees, including some who have been charged but not convicted. One example is that of Uruguayan Senator Enrique Erro detained by the Peronist government under state of siege in 1975, whose expulsion order was signed November 3, 1976.

The working group has made it clear that GOA considers those detained by the Executive under state of siege provisions to be criminal cases, not political prisoners, and that the government has legal procedures with which to handle persons suspected of subversive crimes. It has also indicated that the government is making confidential information on an internal security matter available to foreign embassies in the name of good relations, not because it has any obligation to do so.

Detention and judicial procedure for persons accused of subversive crimes are outlined in detail in Argentine law, part of which has been decreed by the present military government to deal with the perceived subversive threat. Recent decree-laws permit arrest, search and detention without warrant where suspicion of subversive crimes exists; a summary pretrial conducted by the security forces before the accused is officially charged and ordered detained by Executive decree; detailed description of subversive crimes, the responsible trial authority and fairly specific (and severe) penalties for each charge. According to Argentine authorities, the treatment of persons accused of subversive activities is consistent with Argentine law. They blame the lack of information on detained persons chiefly to the slowness and decentralization of the system.

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Habeas Corpus is denied for persons detained under state of siege provisions. Once detained under Executive order, however, prisoners generally can and do receive visits by members of the immediate family and, we understand, can receive mail which is first cleared by an office of the Federal Penitentiary Service. They can also engage lawyers, although it has proven difficult to find lawyers willing to take cases of persons charged under anti-subversion laws. Prisoners in Villa Devoto told Amnesty International representative Lord Avebury who visited the prison on November 10 that conditions in the prison are satisfactory, although they had been roughly treated during earlier periods of confinement elsewhere.

Since the beginning of March, GOA has released and/or expelled some 1,100 prisoners, according to information obtained by the Embassy, listing names and expulsion and liberation decrees. In most cases, the foreign detainees listed, including all Americans, were expelled from the country. Only on rare occasion have Argentine nationals been expelled. The law states that an Argentine deported from the country cannot return as long as state of siege is in force.

On October 28 the Interior Ministry announced that persons being held under state of siege may petition to leave the country 90 days after their arrest order. The Ministry has said it will not approve petitions of persons it considers to be a threat to national security.

The Constitutional right for persons held under Executive order during state of siege to opt to leave the country (Article 23) was suspended for a second 180-day period by the military government on October 29. The suspension was recently upheld by the Argentine Supreme Court (November 16, 1976) which ruled that institutional acts by de facto governments supersede prior legislation and Constitutional provisions where such conflict. This principle is generally accepted in Argentina and has been upheld by the courts in the past.

Persons accused of crimes against national security may be tried by

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civilian criminal courts or by special, permanent courts martial. Laws specifically indicate which crimes fall in the jurisdiction of the courts martial. In general they include crimes committed against military or security personnel and establishments, crimes committed while falsely representing security forces, participation in illegal groups, aiding and abetting, inciting to violence, fabrication and illegal possession of arms, and other subversive crimes. The jurisdiction of the special courts martial was expanded on November 19 by Law 21.461 to include a number of crimes of a subversive nature which were formerly tried in civilian courts. The Justice Ministry said the law will help speed up the judicial process as civilian court cases are running up to two years behind. The special courts martial includes the right of appeal up to the Supreme Council of the Armed Forces, a presidentially-appointed group of nine officers who sit in Buenos Aires.

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